IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 586 OF 2005

DEVABHAI N. PATEL .. APPELLANT

Vs.

THE MUN. CORPN. OF GR.BOMBAY .. RESPONDENT

Mr. Desai with Ms. Geeta Shastri i/b Khilnani & Co. for appellant

Mr. J. Xavier for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-21-4-2005

P.C.

This first appeal is filed by the original plaintiff. It is directed against the judgment and order dated 13/1/05 passed by the City Civil Court at Mumbai, in L C Suit No. 4871 of 1995. For the sake of convenience the parties are referred to in this order as per their status in the trial court.

2. In the suit the plaintiff has challenged notice dated 9/12/89 issued by the Bombay Municipal Corporation under Section 351 of the Bombay

Municipal Corporation Act and the order of the Dy. Municipal Commissioner ("DMC" for short) dated 3/7/95. The notice was issued about unauthorised set back terrace covering by providing A.C. Sheet, unauthorised side enclosures by providing steel grills and unauthorised construction of Mori at flat No. 103, Gold Coin Soc., Tardeo Road and also about covered balcony. It appears from the D M C's order that the D M C also came to the conclusion that the unauthorised construction cannot be tolerated as per the policy of the Corporation or regularised under the D C Rules.

3. The defendant corporation filed its written statement. The plaintiff led evidence under Order 18 Rule 4 of the Code of Civil Procedure. The plaintiff was cross-examined by the defendant. However, the defendant did not lead any evidence.
4. After perusing the evidence on record the trial court came to a conclusion that the suit notice and suit order are legal. The trial court further came to conclusion that the construction put up by the plaintiff is unauthorised and it violates FSI regulations which cannot be allowed. In view of this the trial court dismissed the suit. That order is challenged in this appeal.
5. I have heard the learned counsel appearing for the parties.
6. In my opinion there is no substance in the appeal. By the impugned order the trial court has considered all the issues in depth and arrived at correct

conclusion. Hence no interference is necessary with the impugned judgment and order. The appeal, will have to be, therefore, dismissed. However, the learned counsel for the appellant states that the appellant desires to make a proposal for regularisation through licenced Architect to the Executive Engineer, Building Proposal Dept., City. According to him there is change in the Corporation's policies from time to time and, therefore, the plaintiff's application for regularisation is likely to be considered in his favour.

7. In my opinion, if the appellant makes such application / proposal for regularisation the same may be considered by the concerned authority in accordance with law. Hence the following order:

> "Appeal is dismissed.
>
> If the appellant makes an application to the Executive Engineer Building Proposal Dept., City, through his licensed Architect within a period of 12 weeks from today, the same may be considered within eight weeks from the date of receipt thereof in accordance with law. If such an application / proposal is made then till such time as the same is considered and the result thereof is communicated to the appellant and two weeks thereafter the Corporation shall not take steps pursuant to the impugned notice and the impugned order of the D M C. so far

as the present appellant is concerned.

Needless to say that if no such application is made within the prescribed time, the Corporatin will be at liberty to execute the impugned notice and the order.

This court has not expressed any opinion on the aspect of regularisation.

In view of the above civil application is also disposed of.

Parties to act on authenticatged copy of this order."

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